

PART 68—PROVISION OF FREE PUBLIC EDUCATION FOR ELIGIBLE CHILDREN PURSUANT TO SECTION 6, PUBLIC LAW 81-874

Sec.

- 68.1 References.
- 68.2 Purpose.
- 68.3 Applicability and scope.
- 68.4 Policy.
- 68.5 Definitions.
- 68.6 Responsibilities.
- 68.7 Effective date and implementation.

AUTHORITY: 20 U.S.C. 241.

SOURCE: 52 FR 44389, Nov. 19, 1987, unless otherwise noted.

§68.1 References.

- (a) Public Law 97-35, "Omnibus Budget Reconciliation Act of 1981," section 505(c), August 13, 1981 (20 U.S.C. 241 note).
- (b) Public Law 81-874 dated September 30, 1950, section 6, as amended (20 U.S.C. 241).
- (c) Public Law 95-561, "Defense Dependents' Education Act of 1978," sections 1009 and 1031(a), November 1, 1978 (20 U.S.C. 241).
- (d) Memorandum of Understanding Between The Department of Defense and The Department of Education, August 16, 1982.
- (e) FEDERAL REGISTER Document 84-11282, "Process for Section 6 Schools Operated by the Department of Defense," FEDERAL REGISTER, Volume 49, Number 82, page 18028, April 26, 1984.
- (f) Assistant Secretary of Defense (Force Management & Personnel) Memorandum, "Education of Handicapped Students in Section 6 Schools Operated by the Department of Defense," December 10, 1986.
- (g) Public Law 94-142, "Education for All Handicapped Children Act of 1975," as amended (20 U.S.C. 1401 *et seq.*).
- (h) DoD Directive 1020.1, "Non-discrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense," March 31, 1982.
- (i) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983, authorized by DoD Instruction 7220.9, October 22, 1981.
- (j) DoD Directive 7600.6, "Audit of Nonappropriated Funds and Related Activities," January 4, 1974.

- (k) DoD Directive 5500.7, "Standards of Conduct," January 15, 1977.

§68.2 Purpose.

This part:

- (a) Establishes policies and prescribes procedures for the Department of Defense (DoD) to make arrangements (as defined in §68.5) for the provision of free public education to eligible dependent children as authorized by §68.1 (a), (b), and (c).
- (b) Implements §68.1 (a), (b), (d), and (e).

§68.3 Applicability and scope.

This part applies to:

- (a) The Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.
- (b) The schools operated by DoD within the Continental United States (CONUS), Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

§68.4 Policy.

- (a) In conformity with §68.1 (a), (b), and (c), it is DoD policy that dependent children of U.S. military personnel and federally employed civilian personnel residing on Federal property be educated, whenever suitable, in schools operated and controlled by local public school systems.
- (b) When it is not suitable for the children of U.S. military personnel and federally employed civilian personnel to attend a locally operated public school, the Secretary of Defense, or designee, shall make arrangements for the free public education of such children. These arrangements may include the establishment of schools within the United States and specified possessions.
- (c) The arrangements for such free public education shall be made by the Secretary of Defense, or designee, either with a local educational agency, or with the Head of a Federal Department or Agency, whichever in the judgment of the Secretary, or designee, appears to be more applicable. If such an arrangement is made with the Head of a Federal Department or Agency, either it must administer the property on which the children to be educated

reside or, if the local schools are unavailable to the children of members of the Armed Forces on active duty because of official State or local action and no suitable free public education may be provided by a local educational agency, the Department or Agency must have jurisdiction over the parents of some or all of such children.

(d) Section 6 School Arrangements are required, to the maximum extent practicable, to provide educational programs comparable to those being provided by local public educational agencies in comparable communities in the State where the Section 6 School Arrangement is located. If the Section 6 School Arrangement is outside of CONUS, Alaska, or Hawaii, it shall provide, to the maximum extent practicable, educational programs that are comparable to the free public education provided by the District of Columbia.

(e) Section 6 School Arrangements operated by DoD under 68.1 (a)1 (b), and (d) shall comply, except as provided in this paragraph, with §68.1(g). If the State or other jurisdiction on which a Section 6 School Arrangement's educational comparability is based has adopted a "State plan" for the implementation of §68.1(g) that Section 6 School Arrangement shall provide its handicapped students a free appropriate public education, as defined in §68.1(g). That education, except as follows in this paragraph, is consistent with such State plan. To satisfy this responsibility, Section 6 School Arrangements shall conform to the substantive and procedural provisions of §68.1(g), except for those relating to impartial due process hearings in section 1415 of §68.1(g). The procedures of such Section 6 School Arrangements for the identification, assessment, and programming of handicapped students in special education and related services must conform to the comparable State's regulatory guidelines. Complaints with respect to the identification, evaluation or educational placement of, or the free appropriate public education provided to, students in such a Section 6 School Arrangement who are or may be handicapped shall be investigated under enclosure 5 to DoD

Directive 1020.1¹ (§68.1(h)). If the State on which a Section 6 School Arrangement's comparability is based has not adopted a State plan, the State plan of an adjacent State must be followed. If no adjacent State has adopted a State plan, the State plan of another State that is similar to the State in which the Section 6 School Arrangement is located shall be selected.

(f) After consultation with the Military Departments, funds shall be made available for the operation and maintenance of Section 6 School Arrangements, on either a direct or reimbursable basis, to the comptroller at the respective military installation. These funds shall remain separate and distinct from the funds of the individual Military Services.

(g) Attendance in Section 6 School and Special Arrangements within CONUS, Alaska, and Hawaii is limited to eligible dependent children under §68.1(b). Guidance, consistent with §68.1 (b) and (c) for student eligibility for Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii shall be established by the Military Department concerned after coordination and approval by the General Counsel of the Department of Defense, or designee, and the Assistant Secretary of Defense (Force Management and Personnel), or designee.

(h) Where a member of the Armed Forces is transferred or retires and the member's family moves after the start of the school year from on-base (post) housing, the member's children shall be permitted to continue in attendance at the Section 6 School Arrangement for the remainder of the school year during which the transfer or retirement occurred, if the child is residing with a parent or legal guardian or another person acting in loco parentis.

(i) Where a member of the Armed Forces is assigned to an installation on which there is a Section 6 School Arrangement and is assigned on-base (post) family housing that is expected to be available for occupancy and to be occupied within 90 school days from

¹Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

the reporting date, the member's children may be permitted to attend the school while residing in an area adjacent to such Federal property. Transportation for children attending a Section 6 School Arrangement under these conditions is the responsibility of the parent.

§ 68.5 Definitions.

Adjacent area. A geographic location that is next to or near Federal property. This normally should include a student commuting area within 45 minutes of the Federal property, unless another area identified as adjacent is designated specifically by an administrator of the Federal property; i.e., the installation commander.

Arrangements. Actions taken by the Secretary of Defense to provide a free public education to dependent children under Pub. L. 81-874 through, first, Section 6 School Arrangements or, second, Section 6 Special Arrangements:

(a) *Section 6 School Arrangement.* When a DoD-operated school is established on Federal property to provide a free public education for eligible children or, if not established on such property, the eligible child resides on such property.

(b) *Section 6 Special Arrangement.* An agreement, under § 68.1(b), between the Secretary of Defense, or designee, the ASD(FM&P), or designee, or the Secretary of a Military Department, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel. Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

Comparability. Comparability is the act of demonstrating that the educational services and programs, school plant and facilities, budget and per-pupil expenditures, and all associated activities and services provided in Section 6 School Arrangements for the free public education of eligible dependent children are, to the maximum extent practicable, equivalent in quality and availability to those provided

by school districts in the State where the Section 6 School Arrangement is located or the district(s) to which it is compared. Each Section 6 School Arrangement, in coordination with the Military Department concerned, shall provide an annual statement, with supporting documentation, which demonstrates its comparability.

Dependent children. Children who reside on Federal property, or are minor dependents who are the children, step-children, adopted children, or wards of U.S. military sponsors or federally employed sponsors, or who are residents in the households of bona fide sponsors who stand in loco parentis to such individuals and who receive one-half or more of their support from such sponsors, and are within the age limits for which the applicable State provides free public education.

Federal property. Real property that is owned or leased by the United States.

Free public education. Education that is provided at public expense under public supervision and direction without charge to the sponsor of a child, and that is provided at the elementary or secondary school level of the applicable State. The term shall not include any education provided beyond grade 12, except in the case of State policy regarding the education of handicapped students, nor does it preclude the collecting of tuition from an Agency responsible for the assignment of a child's sponsor resulting in the attendance of the child of a Section 6 School Arrangement.

Local educational agency. A board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district in a State. The term includes any State Agency operating and maintaining facilities for providing free public education.

Parent. Includes a legal guardian or another person standing in loco parentis.

State. A State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

State educational agency. The officer or Agency primarily responsible for State supervision of public elementary and secondary schools.

§ 68.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)), or designee, shall:

(1) Ensure the development of policies and procedures for the operation, management, budgeting (in accordance with guidance provided by the Assistant Secretary of Defense (Comptroller) (ASD(C))), construction, and financing of Section 6 Schools and for Section 6 Special Arrangements.

(2) Ensure that arrangements shall be made for the free public education of eligible dependent children in CONUS, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, under § 68.1 (a), (b), and (c).

(3) Ensure the establishment of elected school boards in Section 6 School Arrangements operating under § 68.1 (a) and (b).

(4) Ensure that the free public education being provided is, to the maximum extent practicable, of the kind and quality as that being provided by comparable public school districts in the State in which the Section 6 School Arrangement or Section 6 Special Arrangement is located or, if outside of CONUS, Alaska, and Hawaii, as that being provided by the District of Columbia public schools.

(5) Ensure the establishment of audit procedures for reviewing funding of Section 6 School Arrangements and Section 6 Special Arrangements under § 68.1 (a), (b), and (c).

(6) Ensure timely and accurate preparation of budget execution reports and full compliance with accounting requirements in accordance with DoD 7220.9-M² (§ 68.1(i)).

(7) Approve guidance for student eligibility established by a Military Department for Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii.

(b) The *General Counsel of the Department of Defense* (GC, DoD), or designee, shall:

(1) Approve guidance established by a Military Department for student eligibility for Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii.

(2) Provide legal advice for the implementation of this part.

(c) The *Secretaries of the Military Departments*, or designees, shall:

(1) Comply with this Directive, including policies and procedures promulgated under § 68.6(a)(1), and ensure that Section 6 School Arrangements on their respective installations or under their jurisdiction are maintained and operated under this part.

(2) Submit budgets to the ASD(FM&P) for operation and maintenance, procurement, and military construction for each Section 6 School Arrangement and each Section 6 Special Arrangement under OSD guidelines.

(3) Ensure that there is an elected school board at each Section 6 School Arrangement.

(4) Ensure the establishment of a means for employing personnel and, as required, for programming manpower spaces for such employees, all subject to applicable laws and regulations.

(5) Ensure that each Section 6 School Arrangement has current operating guidelines.

(6) Ensure that nonappropriated funds and related activities of Section 6 School Arrangements are reviewed under DoD Directive 7600.6³ (§ 68.1(j)).

(7) Establish guidance, consistent with § 68.1 (b) and (c), for student eligibility to attend Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii and operated by the Military Department concerned. Gain the approval of the ASD(FM&P), or designee, and the GC, DoD, or designee, before implementation.

(d) The *Installation Commanders*, or for Puerto Rico, the *Area Coordinator*, shall:

(1) Provide resource and logistics support at each Section 6 School Arrangement located on the installation.

²Copies may be obtained, at cost, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Va 22161.

³See footnote 1 to § 68.4(e).

(2) Ensure the establishment and operation of an elected school board at the Section 6 School Arrangement.

(3) Ensure the implementation of DoD Directive 5500.7⁴ (§68.1(k)) and that all Section 6 School Arrangement personnel are counseled and familiarized with its contents.

(4) Provide installation staff personnel to advise the school board in budget, civil engineering, law, personnel, procurement, and transportation matters, when applicable.

(5) Disapprove actions of the school board that conflict with applicable statutes or regulations. Disapprovals must be in writing to the school board and shall note the specific reasons for the disapprovals. A copy of this action shall be forwarded through channels of the Military Department concerned to the ASD(FM&P), or designee.

(6) Ensure the safety of students traveling to and from the on-base (post) school(s).

(7) Ensure that comptrollers and other support elements comply with the authorized execution of funds for Section 6 School Arrangements in accordance with the budget approved by the ASD(FM&P), or designee.

(e) The *Section 6 Dependents' School Board* shall:

(1) Review and monitor school expenditures and operations, subject to audit procedures established under this part and consistent with §68.1 (a) and (b).

(2) Conduct meetings, approve agendas, prepare minutes, and conduct other activities incident to and associated with Section 6 School Arrangements.

(3) Recruit and select a Superintendent for the Section 6 School Arrangement under the school board's jurisdiction.

(4) Provide the Superintendent with regular constructive written and oral evaluations of his or her performance. Evaluations should be linked to goals established by the school board with the assistance of the Superintendent.

(5) Provide the Superintendent the benefit of the school board's counsel in matters on individual school board member's expertise.

(6) Ensure the attendance of the Superintendent, or designee, at all school board meetings.

(7) Review and approve school budgets prior to submission to the ASD(FM&P), or designee, through channels of the Military Department concerned.

(8) Establish policies and procedures for the operation and administration of the Section 6 School Arrangement(s).

(9) Provide guidance and assistance to the Superintendent in the execution and implementation of school board policies, rules, and regulations.

(10) Consult with the Superintendent on pertinent school matters, as they arise, which concern the school and on which the school board may take action.

(11) Channel communications with school employees that require action through the Superintendent, and refer all applications, complaints, and other communications, oral or written, to the Superintendent in order to ensure the proper processing of such communications.

(12) Establish policies and procedures for the effective processing of, and response to, complaints.

(f) The *Section 6 School Arrangement Superintendent* shall:

(1) Serve as the chief executive officer to the school board to ensure the implementation of the school board's policies, rules, and regulations.

(2) Attend all school board meetings, or send a designee when unable to attend, sitting with the school board as a non-voting member.

(3) Provide advice and recommendations to the school board and the Installation Commander or Area Coordinator on all matters and policies for the operation and administration of the school system.

(4) Recruit, select, and assign all professional and support personnel required for the school system. Teachers and school administrators shall hold, at a minimum, a current and applicable teaching or supervisory certificate, respectively, from any of the 50 States, Puerto Rico, the District of Columbia, or the DoD Dependents' Schools system. Additional certification may be necessary to comply with respective

⁴See footnote 1 to §68.4(e).

State or U.S. national accreditation association standards and requirements.

(5) Determine retention or termination of employment of all school personnel under applicable Federal regulations.

(6) Organize, administer, and supervise all school personnel to ensure that the curriculum standards, specialized programs, and level of instruction are comparable to accepted educational practices of the State or the District of Columbia, as applicable.

(7) Be responsible for the fiscal management and operation of the school system to include execution of the budget as approved by ASD(FM&P), or designee, and in accordance with school board guidance.

(8) Ensure the evaluation of all school employees on a regular basis.

(9) Ensure the maintenance of all school buildings, grounds, and property accounting records.

(10) Ensure the procurement of necessary school supplies, equipment, and services.

(11) Ensure the preparation of the annual Section 6 School Arrangement budget as approved by the school board, and as required by the ASD(FM&P), or designee, and the Military Department concerned, in accordance with guidance provided by the ASD(C), or designee, under DoD 7220.9-M.

(12) Ensure the maintenance of a professional relationship with local and State school officials.

(13) Ensure, wherever practicable, the maintenance of accreditation of the Section 6 School Arrangement by the State and/or applicable regional accreditation agencies.

(14) Operate the school consistent with applicable Federal statutes and regulations, and with State statutes and regulations that are made applicable to the Section 6 School Arrangement by this part.

(15) Ensure the submission of an annual statement to the Military Department concerned demonstrating comparability of the free public education provided in the Section 6 School Arrangement(s).

(16) Ensure the implementation of the local State plan or regulatory guidelines for compliance with § 68.1(g).

If the State on which a Section 6 School Arrangement's comparability is based has not adopted a State plan, the responsible Section 6 School System Superintendent shall choose the State plan of an adjacent State to follow. If no adjacent State has adopted a State plan, the Superintendent shall select the State plan of another State that is similar to the State in which the Section 6 School Arrangement is located.

(g) *Section 6 School Board Elections.* A school board for a Section 6 School Arrangement, as authorized by section 1009(d) of § 68.1(c), shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Secretary of Defense and under § 68.1(b). The Secretary of the respective Military Department shall:

(1) Ensure that the school board is composed of a minimum of three members elected only by parents or legal guardians (military or civilian) of students attending the school at the time of the election. The terms for school board members are to be established as between one and three years.

(2) Ensure the following procedures for a school board election are observed:

(i) Parents shall have adequate notice of the time and place of the election.

(ii) Election shall be conducted by secret ballot. The candidate(s) receiving the greatest number of votes shall be elected as school board member(s).

(iii) Personnel employed in the school system shall not be school board members, except for the Superintendent, who serves as a non-voting member.

(iv) Nominations shall be by petition of parents of students attending the school at the time of the election. Votes may be cast at the time of election for write-in candidates who have not filed a nomination petition if the write-in candidates otherwise are qualified to serve in the positions sought.

(v) The election process shall provide for the continuity of school board operations.

(vi) Vacancies that occur among members of the elected school board may be filled to complete unexpired

terms by either election of members by a special election process or by a school board election process if at least three school board members serving were elected by parents. Members elected to fill unexpired terms shall not serve more than one year, unless elected by parents of the students.

(vii) The responsibility for developing the plans for and conducting the school board election rests with the Superintendent and the school board.

[52 FR 44389, Nov. 19, 1987, as amended at 53 FR 49981, Dec. 13, 1988]

§ 68.7 Effective date and implementation.

This part is effective October 16, 1987. The Secretary of each Military Department shall forward two copies of the Military Department's implementing documents to the ASD(FM&P) within 120 days.

PART 69—SCHOOL BOARDS FOR DEPARTMENT OF DEFENSE DOMESTIC DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS

Sec.

69.1 Purpose.

69.2 Applicability and scope.

69.3 Definitions.

69.4 Policy.

69.5 Responsibilities.

69.6 Procedures.

AUTHORITY: 10 U.S.C. 2164.

SOURCE: 61 FR 60563, Nov. 29, 1996, unless otherwise noted.

§ 69.1 Purpose.

This part prescribes policies and procedures for the establishment and operation of elected School Boards for schools operated by the Department of Defense (DoD) under 10 U.S.C. 2164, 32 CFR part 345, and Public Law 92-463.

§ 69.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Coast Guard when operating as a service of the Department of the Navy or by agreement between DoD and the Department of Transportation, the Chairman of the Joint Chiefs of Staff, the Unified and Specified Combatant

Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, and the DoD Field Activities.

(b) The schools (prekindergarten through grade 12) operated by the DoD under 10 U.S.C. 2164 and 32 CFR part 345 within the continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, known as DoD DDESS Arrangements.

(c) This part does not apply to elected school boards established under state or local law for DoD DDESS special arrangements.

§ 69.3 Definitions.

(a) *Arrangements.* Actions taken by the Secretary of Defense to provide a free public education to dependent children under 10 U.S.C. 2164 through DoD DDESS arrangements or DoD DDESS special arrangements:

(1) *DDESS arrangement.* A school operated by the Department of Defense under 10 U.S.C. 2164 and 32 CFR 345 to provide a free public education for eligible children.

(2) *DDESS special arrangement.* An agreement, under 10 U.S.C. 2164, between the Secretary of Defense, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel. Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

(b) *Parent.* The biological father or mother of a child when parental rights have not been legally terminated; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in *loco parentis* to that child and contributes at least one-half of the child's support.